

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**KEVIN SCOTT DESMARAIS**  
3285 Macleod Street  
Napa, CA 94558

**Registered Nurse License No. 430825**

Respondent

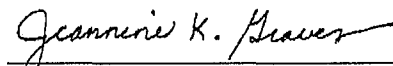
Case No. 2011-857

**DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **August 22, 2011.**

- IT IS SO ORDERED **August 22, 2011.**



\_\_\_\_\_  
President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
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Deputy Attorney General  
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*Attorneys for Complainant*

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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-857

13 **KEVIN SCOTT DESMARAIS**  
3285 Macleod Street  
Napa, CA 94558,

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

14 **Registered Nurse License No. RN 430825,**  
15 Respondent.

16  
17 In the interest of a prompt and speedy resolution of this matter, consistent with the public  
18 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer  
19 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which  
20 will be submitted to the Board for approval and adoption as the final disposition of the  
21 Accusation.

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of  
24 Registered Nursing. She brought this action solely in her official capacity and is represented in  
25 this matter by Kamala D. Harris, Attorney General of the State of California, by Michael B.  
26 Franklin, Deputy Attorney General.

27 2. Kevin Scott Desmarais (Respondent) is representing himself in this proceeding and  
28 has chosen not to exercise his right to be represented by counsel.

3. On or about August 31, 1988, the Board of Registered Nursing issued Registered Nurse License No. RN 430825 to Kevin Scott Desmarais (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-857 and will expire on November 30, 2011, unless renewed.

## JURISDICTION

4. Accusation No. 2011-857 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 13, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2011-857 is attached as Exhibit A and incorporated by reference.

## ADVICE AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2011-857. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2011-857, agrees that cause exists for discipline and hereby surrenders his Registered Nurse License No. RN 430825 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Registered Nurse License without further process.

## CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

## ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. RN 430825, issued to Respondent Kevin Scott Desmarais, is surrendered and accepted by the Board of Registered Nursing.

1        14. The surrender of Respondent's Registered Nurse License and the acceptance of the  
2 surrendered license by the Board shall constitute the imposition of discipline against Respondent.  
3 This stipulation constitutes a record of the discipline and shall become a part of Respondent's  
4 license history with the Board.

5        15. Respondent shall lose all rights and privileges as a Registered nurse in California as  
6 of the effective date of the Board's Decision and Order.

7        16. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
8 issued, his wall certificate on or before the effective date of the Decision and Order.

9        17. If he ever applies for licensure or petitions for reinstatement in the State of California,  
10 the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws,  
11 regulations and procedures for licensure in effect at the time the application or petition is filed,  
12 and all of the charges and allegations contained in Accusation No. 2011-857 shall be deemed to  
13 be true, correct and admitted by Respondent when the Board determines whether to grant or deny  
14 the application or petition.

15        18. If and when Respondent's license is reinstated, he shall pay to the Board costs  
16 associated with its investigation and enforcement pursuant to Business and Professions Code  
17 section 125.3 in the amount of \$1,545.00. Respondent shall be permitted to pay these costs in a  
18 payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the  
19 Board from reducing the amount of cost recovery upon reinstatement of the license.

20        19. If Respondent should ever apply or reapply for a new license or certification, or  
21 petition for reinstatement of a license, by any other health care licensing agency in the State of  
22 California, all of the charges and allegations contained in Accusation, No. 2011-857 shall be  
23 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of  
24 Issues or any other proceeding seeking to deny or restrict licensure.


25        20. Respondent shall not apply for licensure or petition for reinstatement for two (2)  
26 years from the effective date of the Board of Registered Nursing's Decision and Order.

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DATED:

  
KEVIN SCOTT DESMARAIS  
Respondent

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: June 9, 2011

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

MICHAEL B. FRANKLIN  
Deputy Attorney General  
*Attorneys for Complainant*

1992-1993 1993-1994

**Exhibit A**

**Accusation No. 2011-857**

3.11.11, 10:32 AM

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
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8 LYDIA ZANE, Senior Legal Analyst  
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10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 2011-857

15 **KEVIN SCOTT DESMARAIS**  
16 **3285 Macleod Street**  
**Napa, CA 94558**  
17 **Registered Nurse License No. RN 430825**

**A C C U S A T I O N**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
23 Consumer Affairs.

24 2. On or about August 31, 1988, the Board of Registered Nursing issued Registered  
25 Nurse License Number RN 430825 to Kevin Scott Desmarais (Respondent). The Registered  
26 Nurse License was in full force and effect at all times relevant to the charges brought herein and  
27 will expire on November 30, 2011, unless renewed.

28 ///



## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"..."

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:"

"..."

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to

1 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
2 ability to conduct with safety to the public the practice authorized by his or her license.

3 "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
4 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
5 or the possession of, or falsification of a record pertaining to, the substances described in  
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
7 thereof.

8 "(d) Be committed or confined by a court of competent jurisdiction for intemperate use of  
9 or addiction to the use of any of the substances described in subdivisions (a) and (b) of this  
10 section, in which event the court order of commitment or confinement is prima facie evidence of  
11 such commitment or confinement."

12 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
13 revoke a license on the ground that the licensee has been convicted of a crime substantially  
14 related to the qualifications, functions, or duties of the business or profession for which the  
15 license was issued.

16 9. Section 118, subdivision (b), of the Code provides that the suspension/expiration  
17 /surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
18 disciplinary action during the period within which the license may be renewed, restored, reissued  
19 or reinstated.

20 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
21 administrative law judge to direct a licensee found to have committed a violation or violations of  
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
23 enforcement of the case.

#### 24 REGULATORY PROVISIONS

25 11. California Code of Regulations, title 16, section 1444, states:

26 "A conviction or act shall be considered to be substantially related to the qualifications,  
27 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
28 potential unfitness of a registered nurse to practice in a manner consistent with the public health,

1 safety, or welfare. . . .”

2 CAUSE FOR DISCIPLINE

3 (Substantially Related Conviction)

4 12. Respondent is subject to disciplinary action under sections 2761(f), 2762(b), 2762(c),  
5 2762(d), and/or 490, as defined in section 1444, title 16, of the California Code of Regulations, in  
6 that on or about September 9, 2007, Respondent was convicted by his plea of Nolo Contendere to  
7 the violation of California Vehicle Code section 23152(b), (driving under the influence with .08  
8 percent or more alcohol in [his] blood), a misdemeanor. Imposition of judgment was suspended  
9 and Respondent's request for probation was granted for 60 months. The Court further ordered  
10 Respondent to serve 96 hours in jail with 6 hours credit for time served, and ordered to enroll in,  
11 faithfully attend and successfully complete a nine month first offender DUI program. Respondent  
12 was ordered to pay fines, fees and restitution in the approximate amount of \$2,585.60. The  
13 circumstances of the conviction are as follows:

14 a. On or about April 15, 2007, at approximately 2350 hours, Officers from the County  
15 Sheriff's office detained Respondent after he was observed to be in an extremely intoxicated  
16 state, with signs of confusion and with slurred speech. The Officers returned Respondent to his  
17 motel and cautioned him not to leave the room until he was sober. At approximately 0018 hours,  
18 the Officers observed Respondent leaving his motel room and attempting to move his vehicle by  
19 driving it out of the parking lot onto Highway 1. Officers noted that Respondent still appeared to  
20 be intoxicated and requested that he submit to testing wherein it was determined that his blood  
21 alcohol level was .23 percent.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
24 and that following the hearing, the Board of Registered Nursing issue a decision:

25 1. Revoking or suspending Registered Nurse License Number RN 430825, issued to  
26 Kevin Scott Desmarais;

27 2. Ordering Kevin Scott Desmarais to pay the Board of Registered Nursing the  
28 reasonable costs of the investigation and enforcement of this case, pursuant to Business and

1 Professions Code section 125.3;

2 3. Taking such other and further action as deemed necessary and proper.

3  
4  
5 DATED:

4/15/11

*Louise R. Bailey*

LOUISE R. BAILEY, M.ED., RN

Executive Officer

Board of Registered Nursing

Department of Consumer Affairs

State of California

Complainant

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